

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT ANTHONY MCNEIL,

Defendant-Appellee.

UNPUBLISHED

August 9, 2005

No. 253394

Wayne Circuit Court

LC No. 03-008756

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

MEMORANDUM.

I. Overview

Defendant Robert McNeil pleaded guilty to one count of first-degree criminal sexual conduct (CSC I)¹ without the benefit of a plea or sentencing agreement. The applicable statutory sentencing guidelines established a minimum term range of 27 to 45 months for the offense. The trial court sentenced McNeil to five years' probation, with the first year in jail. The prosecutor appeals by leave granted. We vacate McNeil's sentence and remand for resentencing. We decide this appeal without oral argument pursuant to MCR 7.214(E).

II. Sentencing Challenge

A. Standard Of Review

The validity of a sentence presents a question of law that we review de novo.²

B. MCL 771.1(1)

The trial court lacked the authority to sentence McNeil to probation, notwithstanding McNeil's participation in counseling and requests from the victim's family, because MCL 771.1(1) prohibits probation for a defendant convicted of CSC I. We vacate McNeil's sentence and remand this case for resentencing. On remand, the trial court must sentence McNeil in

¹ MCL 750.520b(1)(a) (victim under thirteen years old).

² *People v Gonzalez*, 256 Mich App 212, 229; 663 NW2d 499 (2003).

accordance with MCL 771.1(1) and the sentencing guidelines. We decline the prosecutor's request to order that McNeil be resentenced before a different judge. The trial court did not indicate that it would refuse to impose sentence in accordance with the law if ordered to do so.³

Vacated and remanded. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald

³ *People v Hill*, 221 Mich App 391, 398; 561 NW2d 862 (1997).